

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FREQUENCY, LLC (f/k/a GOODRADIO.TX, LLC), INC.

Plaintiff,

v.

CLEAR CHANNEL BROADCASTING, INC.,

Defendant.

No. 07-CIV-7785 (PKC)

DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendant Clear Channel Broadcasting, Inc. ("Clear Channel") files this original answer to the Amended Complaint filed by Plaintiff Frequency, LLC (f/k/a GoodRadio.TV, LLC) ("Plaintiff's Amended Complaint").

SUMMARY OF THE ACTION

1. To the extent a response to the "Summary of the Action" is deemed necessary, Clear Channel admits paragraph 1.
2. To the extent a response to the "Summary of the Action" is deemed necessary, Clear Channel denies paragraph 2.

THE PARTIES

3. Clear Channel is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 of Plaintiff's Amended Complaint, and so they are denied.
4. Clear Channel admits the allegations contained in paragraph 4 of Plaintiff's Amended Complaint.

JURISDICTION AND VENUE

5. Clear Channel denies the allegations contained in paragraph 5 of Plaintiff's Amended Complaint and demands strict proof thereof.

6. Clear Channel admits the allegations contained in paragraph 6 of Plaintiff's Amended Complaint.

7. Clear Channel denies the allegations contained in paragraph 7 of Plaintiff's Amended Complaint and demands strict proof thereof.

ALLEGATIONS OF FACT

8. Clear Channel admits the allegations contained in paragraph 8 of Plaintiff's Amended Complaint.

9. Clear Channel admits the allegations contained in paragraph 9 of Plaintiff's Amended Complaint.

10. Clear Channel admits the allegations contained in paragraph 10 of Plaintiff's Amended Complaint.

11. Clear Channel is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiff's Amended Complaint, and so they are denied.

12. Clear Channel denies the allegations contained in paragraph 12 of Plaintiff's Amended Complaint and demands strict proof thereof.

13. Clear Channel denies the allegations contained in paragraph 13 of Plaintiff's Amended Complaint and demands strict proof thereof.

14. Clear Channel denies the allegations contained in paragraph 14 of Plaintiff's Amended Complaint and demands strict proof thereof.

15. Clear Channel denies the allegations contained in paragraph 15 of Plaintiff's Amended Complaint and demands strict proof thereof.

16. Clear Channel admits the allegations contained in paragraph 16 of Plaintiff's Amended Complaint.

17. Clear Channel denies the allegations contained in paragraph 17 of Plaintiff's Amended Complaint and demands strict proof thereof.

18. Clear Channel denies the allegations contained in paragraph 18 of Plaintiff's Amended Complaint and demands strict proof thereof.

19. Clear Channel denies the allegations contained in paragraph 19 of Plaintiff's Amended Complaint and demands strict proof thereof.

20. Clear Channel admits the allegations contained in paragraph 20 of Plaintiff's Amended Complaint.

21. Clear Channel admits the allegations contained in paragraph 21 of Plaintiff's Amended Complaint.

22. Clear Channel denies the allegations contained in paragraph 22 of Plaintiff's Amended Complaint and demands strict proof thereof.

23. Clear Channel denies the allegations contained in paragraph 23 of Plaintiff's Amended Complaint and demands strict proof thereof.

24. Clear Channel denies the allegations contained in paragraph 24 of Plaintiff's Amended Complaint and demands strict proof thereof.

25. Clear Channel denies the allegations contained in paragraph 25 of Plaintiff's Amended Complaint and demands strict proof thereof.

26. Clear Channel denies the allegations contained in paragraph 26 of Plaintiff's Amended Complaint and demands strict proof thereof.

27. Clear Channel denies the allegations contained in paragraph 27 of Plaintiff's Amended Complaint and demands strict proof thereof.

28. Clear Channel denies the allegations contained in paragraph 28 of Plaintiff's Amended Complaint and demands strict proof thereof.

29. Clear Channel admits the allegations contained in paragraph 29 of Plaintiff's Amended Complaint.

30. Clear Channel denies that, "starting at the end of July," it stopped providing Plaintiff with weekly and monthly financial reports and demands strict proof thereof. Clear Channel admits that it stopped providing weekly and monthly financial reports after Frequency breached the APA and filed this lawsuit seeking rescission and termination of the Agreement.

31. Clear Channel denies the allegations contained in paragraph 31 of Plaintiff's Amended Complaint and demands strict proof thereof.

32. Clear Channel admits the allegations contained in paragraph 32 of Plaintiff's Amended Complaint.

33. Clear Channel admits that it filed a petition against Plaintiff and others in state court in Bexar County, Texas for breach of the APA and several torts relating to Plaintiff's breach and wrongful termination of the APA. Clear Channel denies the remaining allegations in paragraph 33 of Plaintiff's Amended Complaint and demands strict proof thereof.

34. Clear Channel admits the allegations contained in paragraph 34 of Plaintiff's Amended Complaint.

35. Clear Channel admits that it did not file the petition in Bexar County under seal, and it admits that Plaintiff filed this lawsuit under seal in New York state court. Clear Channel denies the remaining allegations contained in paragraph 35 of Plaintiff's Amended Complaint and demands strict proof thereof.

36. Clear Channel denies the allegations contained in paragraph 36 of Plaintiff's Amended Complaint and demands strict proof thereof.

37. Clear Channel admits that it did not give Plaintiff advance notice of the filing of the lawsuit in Bexar County. Clear Channel denies the remaining allegations in paragraph 37 of Plaintiff's Amended Complaint and demands strict proof thereof.

38. Clear Channel denies the allegations contained in paragraph 38 of Plaintiff's Amended Complaint and demands strict proof thereof.

39. Clear Channel admits an ownership interest in Inside Radio. Clear Channel denies the remaining allegations in paragraph 39 and demands strict proof thereof.

40. Clear Channel admits the allegations contained in paragraph 40 of Plaintiff's Amended Complaint.

41. Clear Channel admits the allegations contained in paragraph 41 of Plaintiff's Amended Complaint.

42. The APA, which is attached as Exhibit A to Plaintiff's Amended Complaint is a document, which speaks for itself. No answer is therefore required.

43. Clear Channel admits the allegations contained in paragraph 43 of Plaintiff's Amended Complaint.

44. Clear Channel admits the allegations contained in paragraph 44 of Plaintiff's Amended Complaint.

45. The APA, which is attached as Exhibit A to Plaintiff's Amended Complaint is a document which speaks for itself. No answer is therefore required.

46. Exhibit B is a document, which speaks for itself. No answer is therefore required.

47. Exhibit B is a document, which speaks for itself. No answer is therefore required.

48. Exhibit B is a document, which speaks for itself. No answer is therefore required.

49. Exhibit C is a document, which speaks for itself. No answer is therefore required.

50. Exhibit C is a document, which speaks for itself. No answer is therefore required.

51. Exhibit C is a document, which speaks for itself. No answer is therefore required.

52. Exhibit D is a document, which speaks for itself. No answer is therefore required.

53. Exhibit E is a document, which speaks for itself. No answer is therefore required.

54. Exhibit E is a document, which speaks for itself. No answer is therefore required.

55. Exhibit F is a document, which speaks for itself. No answer is therefore required.

56. Clear Channel is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 56 of Plaintiff's Amended Complaint, and so they are denied.

57. Clear Channel is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 57 of Plaintiff's Amended Complaint, and so they are denied.

58. Clear Channel denies the allegations contained in paragraph 58 of Plaintiff's Amended Complaint and demands strict proof thereof.

59. Exhibit G is a document, which speaks for itself. No answer is therefore required.

60. Exhibit H is a document, which speaks for itself. No answer is therefore required.

61. Clear Channel admits the allegations contained in paragraph 61 of Plaintiff's Amended Complaint.

62. Clear Channel denies the allegations contained in paragraph 62 of Plaintiff's Amended Complaint and demands strict proof thereof.

FIRST CLAIM FOR RELIEF

Breach of Contract

63. Clear Channel repeats and re-alleges its Answers to paragraphs 1 through 62 herein.

64. Clear Channel admits the allegations contained in paragraph 64 of Plaintiff's Amended Complaint.

65. Clear Channel denies the allegations contained in paragraph 65 of Plaintiff's Amended Complaint and demands strict proof thereof.

66. Clear Channel denies the allegations contained in paragraph 66 of Plaintiff's Amended Complaint and demands strict proof thereof.

67. Clear Channel denies the allegations contained in paragraph 67 of Plaintiff's Amended Complaint and demands strict proof thereof.

68. Clear Channel denies the allegations contained in paragraph 68 of Plaintiff's Amended Complaint and demands strict proof thereof.

69. Clear Channel denies the allegations contained in paragraph 69 of Plaintiff's Amended Complaint and demands strict proof thereof.

70. Clear Channel denies the allegations contained in paragraph 70 of Plaintiff's Amended Complaint and demands strict proof thereof.

71. Clear Channel denies the allegations contained in paragraph 71 of Plaintiff's Amended Complaint and demands strict proof thereof.

72. Clear Channel denies the allegations contained in paragraph 72 of Plaintiff's Amended Complaint and demands strict proof thereof.

73. Clear Channel denies the allegations contained in paragraph 72 of Plaintiff's Amended Complaint and demands strict proof thereof.

SECOND CLAIM FOR RELIEF

Declaratory Judgment

74. Clear Channel repeats and re-alleges its Answers to paragraphs 1 through 73 herein.

75. Clear Channel admits the allegations contained in paragraph 75 of Plaintiff's Amended Complaint.

76. Clear Channel denies the allegations contained in paragraph 76 of Plaintiff's Amended Complaint and demands strict proof thereof.

77. Clear Channel denies the allegations contained in paragraph 72 of Plaintiff's Amended Complaint and demands strict proof thereof.

78. Clear Channel denies the allegations contained in paragraph 78 of Plaintiff's Amended Complaint and demands strict proof thereof.

79. Clear Channel denies the allegations contained in paragraph 79 of Plaintiff's Amended Complaint and demands strict proof thereof.

80. Clear Channel denies the allegations contained in paragraph 80 of Plaintiff's Amended Complaint and demands strict proof thereof.

81. Clear Channel denies the allegations contained in paragraph 81 of Plaintiff's Amended Complaint and demands strict proof thereof.

82. Clear Channel denies the allegations contained in paragraph 82 of Plaintiff's Amended Complaint and demands strict proof thereof.

83. Clear Channel denies the allegations contained in paragraph 83 of Plaintiff's Amended Complaint and demands strict proof thereof.

84. Clear Channel denies the allegations contained in paragraph 84 of Plaintiff's Amended Complaint and demands strict proof thereof.

85. Clear Channel denies the allegations contained in paragraph 85 of Plaintiff's Amended Complaint and demands strict proof thereof.

86. Clear Channel denies the allegations contained in paragraph 86 of Plaintiff's Amended Complaint and demands strict proof thereof.

87. Clear Channel admits the allegations contained in paragraph 87 of Plaintiff's Amended Complaint.

88. Clear Channel denies the allegations contained in paragraph 88 of Plaintiff's Amended Complaint and demands strict proof thereof.

89. Clear Channel denies the allegations contained in paragraph 89 of Plaintiff's Amended Complaint and demands strict proof thereof.

SECOND CLAIM FOR RELIEF

Declaratory Judgment

90. Clear Channel repeats and re-alleges its Answers to paragraphs 1 through 89 herein.

91. Clear Channel denies the allegations contained in paragraph 91 of Plaintiff's Amended Complaint and demands strict proof thereof.

92. Clear Channel denies the allegations contained in paragraph 92 of Plaintiff's Amended Complaint and demands strict proof thereof.

93. Clear Channel denies the allegations contained in paragraph 93 of Plaintiff's Amended Complaint and demands strict proof thereof.

PLAINTIFF'S PRAYER FOR RELIEF

94. To the extent that a response is deemed necessary to the prayer for relief in Plaintiff's Amended Complaint, the same is denied.

AFFIRMATIVE DEFENSES

Affirmative Defense One – Discharge

95. Clear Chanel is not liable to Plaintiff because Plaintiff's material breach of the APA discharged Clear Channel's obligations.

Affirmative Defense Two – Impossibility of Performance

96. Clear Channel is not liable to Plaintiff because Clear Channel's performance was excused due to impossibility of performance.

Affirmative Defense Three – Repudiation

97. Clear Channel is not liable to Plaintiff because Plaintiff repudiated the APA when, without excuse, Plaintiff indicated that it would not perform the APA. Thus, Clear Channel's obligations under the APA were discharged.

PRAYER

WHEREFORE, Clear Channel prays for judgment against Plaintiff as follows:

- a. A judgment against and dismissing with prejudice Plaintiff's Amended Complaint and all claims asserted therein against Clear Channel; and
- b. Such other and further just and equitable relief to which Clear Channel may be entitled, including reasonable attorneys' fees and expenses.

JURY DEMAND

Clear Channel demands that a jury be impaneled to try this action.

Dated: November 30, 2007
New York, New York

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By:

R. Laurence Macon

R. Laurence Macon
300 Convent Street, Suite 1600
San Antonio, Texas 78205
Telephone: (210) 281-7000
Fax: (210) 224-2035
lmacon@akingump.com

Ariane A. Qureshi
590 Madison Avenue
New York, NY 10022-2525
Telephone: (212) 872-1000
Fax: (212) 872-1002
aaustin@akingump.com

***COUNSEL FOR DEFENDANT
CLEAR CHANNEL BROADCASTING, INC.***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November, 2007, I caused a true and correct copy of the foregoing Defendant's Answer to Plaintiff's Amended Complaint to be served by e-mail and first class mail upon the following:

Max R. Shulman, Esq.
Michael T. Reynolds, Esq.
Cravath, Swaine & Moore LLP
825 8th Avenue
New York, NY 10019
212-474-1000
mshulman@cravath.com
mreynolds@cravath.com

Attorneys for Plaintiff

Dated: November 30, 2007
New York, New York

R. Laurence Macon

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